

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DESIREE ALLAIRE)

Plaintiff,)

v.)

JODAN KALEMRA, alias, a/k/a)
JODAN KALEMBA, RYDER TRUCK)
RENTAL, LT., RTRT, INC. in its capacity)
As trustee for the Ryder Truck Rental, Lt.)
RYDER TRUCK RENTAL, INC.,)
IRON MOUNTAIN OFF-SITE DATA,)
INC. f/k/a ARCUS DATA SECURITY,)
INC., JOHN DOES 1-5)

Defendants.)

CIVIL ACTION NO. 03-CV-12566 RWZ

JOINT MOTION TO CONSOLIDATE ACTIONS PURSUANT TO F.R.C.P. 42(c)

Defendants, Iron Mountain Off-Site Data Protection, Inc., Arcus Data Security, Inc., Jodan Kalemra, whose true name is Kalemra Jodan, and Defendants Ryder Truck Rental, LT., RTRT, Inc., in its capacity as trustee for the Ryder Truck Rental, Lt., Ryder Truck Rental, Inc. (collectively "Defendants"), hereby move pursuant to Rule 42(a) of the Federal Rules of Civil Procedure to consolidate this personal injury action with two companion personal injury actions pending in this Court. The companion cases are entitled Renee Menard v. Iron Mountain Off-Site Data Protection, Inc. Arcus Data Security, Inc. Ryder Truck Rental, Ltd. and Jordan Kalemra, alias, Civil Action No. 03-12076-REK and Scott A. Peters vs. Jodan Kalemra, Iron Mountain Off-Site Data Protection Inc., f/k/a Arcus Data Security, Inc. and Ryder Truck Rental, Lt. Civil Action No. 03-12495REK. As grounds therefor, the Defendants state that this lawsuit and the companion cases arise from the same motor vehicle accident and contain common legal and factual issues. Specifically, they concern a motor vehicle accident that occurred on or about

December 24, 2000 in Nashua, NH involving a vehicle driven by Defendant, Kalemba Jodan (“Jodan”) (a defendant in all of the cases) and a vehicle driven by Scott Peters and occupied by Renee Menard and Desiree Allaire. Each of the Plaintiffs have filed a negligence claim against the Defendants and Ryder Truck Rental, the owner of the vehicle driven by Jodan, alleging personal injuries from the subject accident.

The Federal Rules of Civil Procedure Rule 42(a) states:

“When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the action; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.”

See F.R.C.P. Rule 42(a)(emphasis added). Case law holds that “the court has ‘broad discretion to decide whether consolidation would be desirable and the decision inevitably is contextual.’”

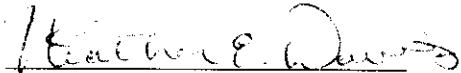
See Howard Gunty Profit Sharing Plan, et al v. Caremark Corp., 2000 WL 33348124 *3 (D.Mass), quoting Wright & Miller, *Federal Practice and Procedure*: Civil 2d § 2383 (2d ed. 1995 & Supp.2000); see also Nager v. Websecure, Inc. 1997 WL 773717 (D.Mass.); see also Storlazzi v. Bakey, 894 F.Supp. 494, 499 (1995) (“...the decision to consolidate cases is one generally left to the discretion of the trial judge.”)

With respect to the present actions, the allegations and claims in the three are nearly identical. Moreover, the issues in all of the cases involve identical questions of fact and law relating to the alleged accident. No discovery responses have been served at this time and no depositions have been noticed. The parties in each of these actions will necessarily conduct the same depositions of fact witnesses. Accordingly, consolidation of the two actions would provide

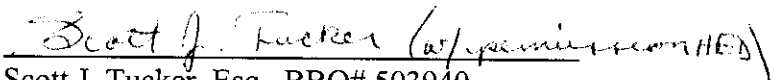
the best means for an efficient use of time and resources, and will reduce any confusion as the cases proceed, establishing a clear, accurate, and complete record concerning the actions.

WHEREFORE, the Defendants, Iron Mountain Off-Site Data Protection, Inc., Arcus Data Security, Inc., Jodan Kalemba, whose true name is Kalemba Jodan, Ryder Truck Rental, LT., RTRT, Inc., in its capacity As trustee for the Ryder Truck Rental, Lt., Ryder Truck Rental, Inc., hereby move that the Court consolidate this action with the actions entitled Renee Menard v. Iron Mountain Off-Site Data Protection, Inc. Arcus Data Security, Inc. Ryder Truck Rental, Ltd. and Jordan Kalemra, alias, Civil Action No. 03-12076-REK and Scott A. Peters vs. Jodan Kalemba, Iron Mountain Off-Site Data Protection Inc., f/k/a Arcus Data Security, Inc. and Ryder Truck Rental, Lt. Civil Action No. 03-12495REK.

Respectfully submitted,
The Defendants,
Iron Mountain Off-Site Data
Protection, Inc., Arcus Data
Security, Inc., and Jodan Kalemba,
whose true name is Kalemba Jodan
By their attorneys,

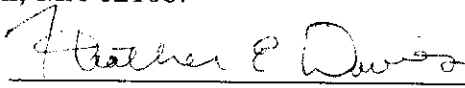

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The Defendants,
Ryder Truck Rental, Lt.,
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As Trustee for the Ryder Truck
Rental, Lt., Ryder Truck Rental, Inc.
By their attorneys,


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CERTIFICATE OF SERVICE

I, Heather E. Davies, Esq., hereby certify that on March 4, 2004, I served a copy of the foregoing Joint Motion to Consolidate Actions Pursuant to F.R.C.P. 42(c) by mailing, via regular U.S. mail, to the following: Scott DeMello, Esq., DeMello & Clark, 109 Oak Street, Newton, MA 02464, Melody A. Alger, Esq., Baluch, Gianfrancesco, Mathieu & Szerlag, 155 South Main Street, Suite 101, Providence, RI 02903, Steven M. Shea, Kevin J. Phelan Law Office, 38 Rock Street, Suite 24, Fall River, MA and Scott J. Tucker, Esq., Tucker, Heifetz & Saltzman, LLP, Three School Street, Boston, MA 02108.


Heather E. Davies, Esq.